

REMARKS

Applicant acknowledges with appreciation the interview among Examiner Alexander Thomas, the inventor Thomas Riccobene, and Applicant's undersigned counsel on October 3, 2007. Applicant has made a sincere effort to address all of the issues raised in the July 13, 2007 Official Action and to place the application in condition for allowance. Reconsideration is respectfully requested.

In paragraphs 2 and 3 of the Official Action, claims 27 and 31 were rejected under Section 112, first paragraph. As to claim 27, the Examiner asserts that the original disclosure does not support a unit having first, second and third angles being equal. Applicant requests reconsideration. The fourth embodiment (Figs. 23-27, page 10, line 17 to page 11, line 15) is a unit where the three angles are equal, 120-120-120 degrees.

As to claim 31, the Examiner states the meaning of the phrase "surface variation mold therein" is not understood. Claim 31 has been amended to call for "a surface variation." The Examiner's attention is directed to page 3, lines 22-24 and page 15, line 12 to page 16, line 7. Therein, Applicant discloses several techniques for introducing a surface variation. A surface variation may comprise a variation in color, or surface irregularity such as a crack, fissure or mark. The surface variation in combination with the irregular side configurations contributes to a natural appearance of the formed surface.

It is respectfully submitted that claims 27 and 31 meet the requirements of Section 112 of the Patent Act.

In paragraphs 4 and 5 of the Official Action, claims 16, 17 and 26-31 were rejected under 35 USC §103(a) as being unpatentable over Johnson (US 5267810). In paragraph 6 of the Official Action, claims 16, 17 and 26-31 were rejected under 35 USC §103(a) as being unpatentable over Mattox (US D439677) in view of Johnson. Applicant also understands that claims 24 and 25 should have been included in the foregoing rejections, as indicated by the Examiner in the interview.

The specification has been amended to be more precise in the definition of “irregular” configuration. In the interview, the Examiner asserted that the definition of “irregularly shaped” appearing in the specification could be literally construed to encompass the stepped side of Johnson and the double or reverse curve of Mattox. Applicant, however, contends that the sides of Johnson and Mattox are not “irregular” within the meaning of the application. Indeed, when the Johnson and Mattox units are respectively assembled into surface coverings, clear geometric patterns appear. See e.g., Fig. 3 of Johnson. Applicant’s disclosure, however, goes in an entirely different direction than the prior art, describing building units that when assembled form surfaces that lack a geometric or repeating pattern. See, Applicant’s specification at page 2, lines 30-33 (“natural and non-repeating pattern appearance”), page 6, lines 5-7 (“no readily apparent repeating pattern”), page 8, lines 4-6 (“a regular geometric pattern is not readily apparent”), page 10, lines 15-16 (“irregular custom made surface, with no apparent repeating pattern”). To clarify the issue, the definition of “irregularly shaped” and “irregular configuration” at page 2, lines 18-24 has been amended to specify that the

terms mean that side is jagged or rough hewn, not straight or smoothly curved, such that when units are assembled the surface lacks a discernable geometric pattern. Entry is requested.

It is submitted that claims 16, 17, and 24-31 are allowable over both Johnson and Mattox because neither reference discloses sides having an “irregular configuration.” It is submitted that the sides of Johnson are not jagged or rough hewn. In each side in Johnson, the exterior face 16 is parallel to the interior face 18. As a result, the units when assembled form a clear hexagonal, honeycomb configuration. See Johnson Fig. 3. It is submitted that this geometric pattern is intended in Johnson. It is submitted that the same is true in Mattox, as each side is smoothly curved with a reverse curve so that each side will mate with each other side. Although Mattox does not include a figure depicting a surface covering, it is clear that when multiple units are assembled to form a surface covering, a substantially square, repeating pattern will be obviously apparent. Neither Mattox nor Johnson meet the definition of “irregular configuration” as set forth above. Accordingly, it is submitted that neither Johnson nor Mattox, alone or in combination, establish a *prima facie* case of obviousness.

It is submitted that claim 16 further distinguishes over Johnson and Mattox because neither reference discloses a plurality of spacers projecting from each side or a primary rotational tessellation defined by the spacers.

Claim 17 is nonobvious over Johnson and Mattox for the additional reason that in both Johnson and Mattox each side is identical to every other side. Claim 17 calls

for the first side to have a configuration that is not identical to the second side. In the interview the Examiner indicated that the sides of Johnson are different. However, Johnson states that each group of faces (sides) is “identical” to all other groups (sides). See Johnson, col. 2, lines 16-19 and 25-30.

Claim 24 is nonobvious over Johnson and Mattox for the additional reason that it calls for “spacers comprising indicia” that define a rotational tessellation. The Examiner takes official notice that indicia are known. Applicant agrees that indicia *per se* are old, but submits that the claimed combination is novel and nonobvious. In both Johnson and Mattox, respectively, every side of every unit will mate with any side of any other unit. Accordingly, there is no reason to add indicia to either Johnson or Mattox. Furthermore, no art of record shows a spacer that also comprises indicia – or any structure that performs the dual function of spacing and matching sides of units – and, it is submitted, the claimed spacer-indicia combination cannot be shown to be obvious by invocation of official notice. The Manual of Examining Procedure states:

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

M.P.E.P §2144.03. It is submitted that the spacer-indicia combination does not meet the standard for official notice. Further, it is submitted that the cited references taken

together do not remotely suggest a building unit with irregular sides where spacers define a rotational tessellation and comprise indicia to facilitate matching units. Reconsideration of the rejection of claim 24 is respectfully requested.

Claims 25 and 30 as amended call for sides comprised of multiple straight line segments with each segment being set at an angle relative to the other segments such that the appearance of each side is irregular. In Johnson, the exterior face 16 is parallel to the interior face 18 such that side is not irregular. Mattox does not disclose sides comprised of straight line segments. Claims 25 and 30 are nonobvious for this additional reason.

Claim 26 as amended is allowable for the additional reason that it calls for one pair of sides to have a length that is different from the other pairs of sides. The specification has been amended to provide antecedent support. Support in the original disclosure is present in the drawings, especially Figs. 2, 11, 17, and 23 which show tessellation units having pairs of sides of different length than other pairs. In Johnson and Mattox, all sides are the same length. Accordingly, Johnson and Mattox do not establish a *prima facie* case of nonobviousness. Claim 26 is patentable over Johnson and Mattox for this additional reason.

Similar to claim 17, claim 29 calls for sides within each pair of sides that are not identical in configuration. In Johnson and Mattox all sides are identical. Thus, claim 29 is nonobvious for this additional reason.

Claim 30 as amended calls for a surface variation. This subject matter is discussed above in reference to the Section 112 rejection. Neither Johnson nor Mattox disclose a surface variation and thus, claim 30 is non-obvious for this additional reason.

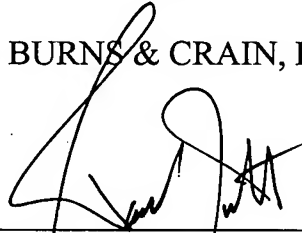
Claims 31 and 32 have been added. It is submitted that they are allowable over the prior art of record.

For the foregoing reasons, it is submitted that the claims as amended are patentable over the cited references. Early notice of allowance is earnestly solicited.

Respectfully submitted,

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